

UNITED STATES
v.
PAUL M. KOENIGSMARK ET AL.

IBLA 81-254

Decided March 31, 1981

Appeal from the order of Administrative Law Judge Robert W. Mesch granting contestant's motions to amend the complaint and for summary judgment in contest Utah 10706, and declaring mining claims Omega Nos. 1-4, 6, 8-15 abandoned and void.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Mining Claims: Assessment Work -- Mining Claims: Recordation

Even though the Bureau of Land Management knew of the existence of certain mining claims, as evidenced by BLM's initiation of contest proceedings against the claims, the claimants were not relieved of the responsibility of complying with the recordation requirements of sec. 314 of the Federal Land Policy and Management Act. The filing of evidence of assessment work is an annual requirement and

failure to so file alone is deemed to constitute conclusive abandonment of the claims.

APPEARANCES: William T. Thurman, Esq., for contestees.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken by Eugene Barron, Osmond Barron, Sterling P. Barron II, Bette Ann Duesing, Peggy Jane Gates, and Peggy K. Stolberg (a.k.a. Margaret Katherine Stolberg, executrix of the Estate of Helen D. Kohlberg, deceased, and sole surviving heir of Helen D. Kohlberg) from that part of the order of November 26, 1980, wherein Administrative Law Judge Robert W. Mesch granted contestant's motion to amend the contest complaint and contestant's motion for summary judgment in contest Utah 10706, and invalidated the interest of the contestees in all the contested mining claims involved.

The order of Judge Mesch related to contests Utah 10706, Omega placer mining claim Nos. 1-4, 6, 8-15, with contestees Paul M. Koenigsmark, Eugene D. Barron, Sterling P. Barron II, and Peggy K. Stolberg (a.k.a. Margaret Katherine Stolberg, executrix of the Estate of Helen D. Kohlberg, deceased, and sole surviving heir of Helen D. Kohlberg); Utah 10707, Ignacio placer mining claims Nos. 17-19, 29, 69-76, 78, 79, 83, 109-132, with the contestee Paul M. Koenigsmark; and Utah 10708, Shale placer mining claims Nos. 1-6, 9-60, 65-96, 99-124, 129-140, with the contestee Paul M. Koenigsmark. 1/ Each of the claims was located for oil shale in the early part of February 1920, and the claims, as a group, are situated within T. 10 S., Rs. 24, 25 E., Salt Lake meridian, Uintah County, Utah.

The initial contest complaints charged:

5. The above mining claims are not valid because:

A. Valuable minerals were not found within the limits of the claims on or before February 25, 1920, or subsequent to February 25, 1920, as a result of diligent prosecution of work leading to a discovery on February 25, 1920, and thereafter continued, so as to constitute a valid discovery within the meaning of the mining law.

1/ In the November 26, 1980, order, Judge Mesch found that Paul M. Koenigsmark had not satisfactorily responded to an earlier show cause order and that, as a result, the allegations in each contest complaint would be taken as admitted by Koenigsmark. Judge Mesch then declared the claims involved in all three contests null and void insofar as Koenigsmark's interests are concerned. No appeal was taken and thus the order represents a final decision in these contests as to Koenigsmark.

B. If a valid discovery was made on or before February 25, 1920, or subsequent to February 25, 1920, as a result of diligent prosecution of work leading to a discovery on February 25, 1920, and thereafter continued, the discovery was subsequently lost and the lands within the claims reverted to and became a part of the unappropriated public domain.

C. Valuable, locatable mineral deposits were not found on any of the claims at a time when the lands covered by the claims were subject to location under the mining laws of the United States.

D. Annual assessment work substantially complying with requirements of Section 2324 of the Revised Statute (30 U.S.C. 28) has not been performed for the benefit of any of the claims.

E. The claims have been abandoned.

Following extended litigation, culminating in Andrus v. Utah, 100 S. Ct. 1803, rehearing denied, 100 S. Ct. 3051 (1980), and a prehearing conference on August 6, 1980, the State of Utah withdrew from these proceedings. At the time of the prehearing conference, the lessees of Federal oil shale leases, U-a and U-b, declined to participate as intervenors. The lands embraced by the contested claims are included within the Federal oil shale leases. Judge Mesch issued an order on August 6, 1980, stating inter alia:

3. The contestees represented by William T. Thurman [all of the contestees except Paul M. Koenigsmark] will, by August 30, 1980, state their position as to whether they wish to proceed with the contest involving their claims, i.e. Utah 10706. If they do not wish to proceed further they will file a withdrawal of their answers to the complaint.

4. The contestee represented by John C. Beaslin [Paul M. Koenigsmark] will, by August 30, 1980, state his position as to whether he wishes to proceed with the contests involving his claims, i.e., Utah 10706, Utah 10707 and Utah 10708. If he does not wish to proceed further, he will file a withdrawal of his answers to the complaints.

* * * * *

6. If any of the contestees intend to proceed with the contests, the contestant will, within 30 days after receipt of notice of such intent, file a motion to amend the complaints and a motion for summary judgment based on

alleged failure to comply with section 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744. The contestees will have 30 days after receipt of such motions to file a response.

Thereafter, on September 29, 1980, the Government moved to amend contest Utah 10706 by addition of the following: "F. Omega Claims 1-4, 6, 8-15, located on February 2 and 3, 1920, are abandoned and null and void for failure to file said claims as required by Section 314(b) of FLPMA, 43 U.S.C. 1744(b) and 43 CFR 3833.1-2(a)," and moved for summary judgment, contending the claims were null and void because of failure of the mining claimants to file timely for record in the Bureau of Land Management the documents required by section 314, Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976).

By order of October 15, 1980, Judge Mesch directed Paul M. Koenigsmark to show cause why his failure to respond to the Judge's order of August 6, 1980, should not be interpreted as withdrawal of his further participation in these proceedings, and consent to have the Judge issue a decision finding that Paul M. Koenigsmark had admitted to the several allegations in the complaint as amended, and that the named placer mining claims are null and void insofar as his interests are concerned.

The remaining contestees responded to the order by opposing the motion for summary judgment, asserting that substantial compliance with the recording requirements of FLPMA had been accomplished by and during the prosecution of the proceedings; that is, that BLM was fully aware of the existence and situs of each of the contested claims, the principal reasons for enactment of section 314 of FLPMA.

On November 18, 1980, the Federal oil shale lessees for leases U-a and U-b moved to intervene in these proceedings. The Judge did not rule on this motion in his order of November 26, 1980.

In his order, Judge Mesch stated:

The regulations adopted pursuant to section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744, provide in part that:

1. The owner of an unpatented mining claim located on or before October 21, 1976, shall file on or before October 22, 1979, in the Bureau of Land Management office having jurisdiction over the area in which the claim is located, a copy of the official record of the notice or certificate of location of the claim filed under state law. 43 CFR 3833.1-2(a).

2. The copy of the notice or certificate of location shall be supplemented by additional specifically designated information unless it is included in the copy of the notice or certificate. 43 CFR 3833.1-2(c).

3. Each claim filed shall be accompanied by a one-time service fee. A notice or certificate of location shall not be accepted if it is not accompanied by the service fee. 43 CFR 3833.1-2(d).

4. The owner of an unpatented mining claim who had on file in the proper BLM office on October 21, 1976, or who files on or before October 22, 1979, an application for a mineral patent which contains the documents and information required in § 3833.1-2 shall be exempt from the above filing requirement. 43 CFR 3833.1-3.

5. The owner of an unpatented mining claim located on or before October 21, 1976, shall file in the proper BLM office on or before December 30 of each calendar year following the calendar year of recording under § 3833.1-2(c) evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. 43 CFR 3833.2-1.

6. The evidence of annual assessment work or notice of intention to hold shall be in a specified form and shall set forth specifically described information including the serial number assigned to each claim upon filing of the notice or certificate of location or a patent application. 43 CFR 3833.2-2 and 3833.2-3.

7. The failure to file a copy of the official record of the notice or certificate of location or the evidence of annual assessment work or the notice of intention to hold within the time periods prescribed shall be deemed conclusively to constitute an abandonment of the mining claim and it shall be void. 43 CFR 3833.4.

8. Filing of instruments pertaining to mining claims under other Federal law with the BLM shall not excuse the filings required above. 43 CFR 3833.5(c).

9. Actual notice of an unpatented mining claim by any employee or officer of the United States shall not exempt the claim from the filings required above. 43 CFR 3833.5(e).

I find that the contested Omega claims were located prior to October 21, 1976; that the owners of the claims did not file on or before October 22, 1979, with the BLM

office having jurisdiction over the area in which the claims are located a copy of the official record of the notice or certificate of location of the claims as required by section 314 of FLPMA and the implementing regulations; and that the claims are not exempt from the filing requirement by reason of the owners having filed a mineral patent application.

I further find that the pending contest proceeding, and the fact that employees of the BLM knew of the existence of the claims and might have possessed information concerning the claims similar to that required by the regulations, did not exempt or excuse the owners of the claims from the filing requirement of the Act and the regulations. I take this position because:

1. The regulations recognize only one exemption from the filing requirement, i.e., the timely filing of a mineral patent application.
2. The regulations specifically provide that neither (a) the filing of instruments pertaining to mining claims under other Federal laws with the BLM, nor (b) actual notice of a claim by any employee or officer of the United States shall exempt the claim from the filing requirements.
3. If the owner of a claim does not meet the initial filing requirement and if the claim does not come within the one recognized exemption, then no serial number would be assigned to the claim and the BLM could not realistically determine whether the subsequent annual filings relating to assessment work or notice of intention to hold had been met by the owner of the claim.

The motion to amend the amended complaint and the motion for summary judgment are granted insofar as all contestees other than Mr. Koenigsmark are concerned. The contested Omega claims, insofar as the interests of all contestees other than Mr. Koenigsmark are concerned, are void for failure to comply with the recording requirement of FLPMA and the implementing regulations.

Paul M. Koenigsmark has not satisfied the show cause order of October 15, 1980. I conclude that he does not wish to proceed further with the contests involving his mining claims and that he has no objection to my treating his silence as a withdrawal of his answers to the complaints. I find that the allegations of the complaints have been admitted by Mr. Koenigsmark and that the contested claims are null and void insofar as his interests are concerned.

In view of the above, I see no reason to consider the question of whether Osmond M. Barron, Jr., Bette Ann Duesing and Peggy Jane Gates, who first filed answers to the contest complaint in Utah 10706 on August 29, 1980, should be added as contestees in this proceeding.

I am not ruling on the motion to intervene in Utah 10706 which was filed on November 18, 1980, in behalf of Sunoco Energy Development Company, Sohio Petroleum Company, Phillips Petroleum, and White River Shale Oil Corporation, inasmuch as the parties have not as yet had an adequate opportunity to respond to the motion.

Appellants allege that the order "insofar as it pertains to these Contestees-Appellants, is not supported by the evidence and is contrary to law, all as appears in the files and records herein and which files and records are incorporated herein by reference and made a part hereof," and they reiterate the arguments they raised in objection to the contestant's motion for summary judgment.

Specifically, appellants argue that section 314 of FLPMA was enacted to advise the Federal land managing agency, as proprietor, of the existence of unpatented mining claims on public land. They take the position that BLM knew of the existence and possessed detailed knowledge of the Omega claims prior to the enactment of FLPMA on October 21, 1976, so that, in effect, there had been substantial compliance with the recording requirements of section 314 of FLPMA, and the implementing regulations. All of the pertinent information regarding the dates of location and situs of the Omega claims was set out in the contest complaint issued by BLM November 19, 1973. They argue that the ends of justice and the general spirit and purpose of FLPMA have been amply satisfied with respect to the Omega claims.

[1, 2] Section 314 of FLPMA provides pertinently:

RECORDATION OF MINING CLAIMS AND ABANDONMENT

Sec. 314. (a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-year period following the date of the approval of this Act and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. * * *

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon,

or a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) The owner of an unpatented lode or placer mining claim * * * located prior to the date of approval of this Act shall, within the three-year period following the date of approval of this Act, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim * * * sufficient to locate the claimed lands on the ground. * * *

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner.

We note that FLPMA requires two separate and distinct instruments to be filed with BLM for recordation purposes in connection with unpatented mining claims: a copy of the official record of the notice or certificate of location, and an annual affidavit of assessment work performed on each claim during the preceding assessment year or notice of intention to hold the unpatented mining claim.

The record before us does not contain any indication that affidavits of assessment work have been filed for any of the Omega claims, nor have appellants made any assertion or allegation that such instruments were filed. Thus whether appellants' argument that BLM knew of the existence of the Omega claims in light of the pronouncements set out in the contest complaint, is valid or reasonable or not, the claims must be declared abandoned for failure of the claimants to file the appropriate affidavits reflecting performance of annual assessment work on or before October 22, 1979, and before December 30 of each year thereafter. L. L. Falter, 52 IBLA 313 (1981); Pearl C. Barnett, 52 IBLA 273 (1981). It is not of serious concern that such a charge was not included in the amended contest complaint. The requirement is statutory and may not be waived.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the order

appealed from is affirmed and Omega Nos. 1-4, 6, 8-15 placer mining claims are determined conclusively to be abandoned.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

James L. Burski
Administrative Judge

